

# MINNESOTA EVICTIONS

## Plain and Simple, Sort of . . .

By Matthew Schaap

Very few people are confused about what it means to be “evicted” from property. If you are like me, you envision an “eviction” involving an angry sheriff’s deputy who presides over your physical extraction from the property, together with all of your belongings, which are dumped unceremoniously onto the curb, spilling out into the street at precisely the right moment so they can be run over by a passing city bus as it strikes a strategically-placed mud puddle, which adds insult to injury, soaking you to the bone and ruining your favorite starch-white recliner. I might be overdoing it a little (with the story and the hyphenation), but for most people, even the thought of an eviction is cringe-worthy. What will the neighbors think? But most eviction proceedings do not end in such dramatic fashion, perhaps because most tenants do not wish to experience what might be a very unpleasant and public introduction to homelessness.

The eviction or “unlawful detainer,” (as it is referred to by judges, court administrators and lawyers who know what they’re talking about) is a summary proceeding that remains a mystery to many people (and to some lawyers).

- How do I get started?
- Was I still supposed to be paying rent if my apartment was infested with cat-sized rats?
- Why can’t I get a judgment in an unlawful detainer for the rent I am owed by this deadbeat tenant?
- What occurs at the first appearance, or at an unlawful detainer trial?
- What if the tenant leaves a recliner at the property, or 30 bags of garbage in the garage?
- What if I threw away “garbage” consisting of some very valuable vintage action figures that my tenant had devoted his life to collecting?
- What rights does a tenant have when a landlord withholds a security deposit without explaining why?
- If a tenant sues me, when might I have to pay his/her attorneys’ fees?

Many of these questions are answered in this article. Some are not (If your question is about cat-sized rats, please call me, because I would like to put that video on YouTube). For everyone else, I hope you find this article helpful. And don’t worry, the rest of this article is much more boring and informative than the introduction.

## Evicting a Tenant

Tenants may be evicted when they breach a lease. However, if the breach constitutes only failure to pay rent, as opposed to some other breach, e.g., illegal activity, then the tenant may “pay and stay” if the term of the tenancy has not expired. Therefore, landlords should always plead all material breaches of the lease, both monetary and non-monetary, to the extent they have occurred.

- **Prerequisites to Eviction.** Landlords must disclose to tenants certain information about who is authorized to manage the premises and who is authorized to receive service of process for the landlord. Minn. Stat. § 504B.181.
- **Right to Commence and Action: Breach.** Where a lease exists, if a tenant does not pay rent when it is due, the landlord may immediately bring an eviction action unless the lease provides otherwise. Unless the lease provides otherwise, there is generally no waiting period and no notice required where a breach has occurred.
- **Terminating a Tenancy: No Breach.** If the lease has not been breached but the landlord seeks possession of the property, the tenancy must be terminated before an eviction action can be pursued. Where the lease does not include early termination provisions, no termination or eviction action can occur until the end of the lease term, unless the tenant breaches the lease. In a periodic or holdover tenancy (month to month or otherwise), notice of not less than the interval between the time the rent is due or three months, whichever is less, is required. Minn. Stat. § 504B.135.
- **Commencing the Action.** An Eviction Summons is issued by a court when an Eviction Complaint is filed with the court. A fee must also be paid at that time. The summons includes the date of the first hearing, which will be scheduled between seven and 14 days from the date the complaint is filed.
- **Serving the Summons.** The Summons must then be served at least seven days before the hearing. The method of service is governed by statute and requires multiple attempts at service and posting if personal service cannot be accomplished. Minn. Stat. § 504B.331. Most Minnesota process servers are familiar with these requirements, particularly in the Twin Cities metro area.
- **First Appearance.** In most Minnesota counties, the first appearance is scheduled as a trial, but it is not when the trial will occur because courts usually do not reserve sufficient time for trials during first appearances. The first appearance generally involves settlement discussions and if the tenant presents defenses, they are generally presented at this stage. If the tenant answers the complaint, the answer may be filed at this time. Minn. Stat. § 504B.335 (governing answers and trials).
- **Tenant Defenses: Rent Deposit Required.** If a tenant makes an initial appearance and asserts non-monetary substantive defenses—such as a landlord’s failure to repair or other defenses that could be pursued as claims in a rent escrow action—the tenant is generally not entitled to a trial unless the tenant deposits any unpaid rent. Minn. Stat. 504B.385.
- **Tenant Defenses: No Rent Deposit.** If a tenant makes an initial appearance and asserts monetary substantive defenses, e.g., the rent being claimed has already been paid, then most judges will not require the tenant to deposit the allegedly unpaid rent. Likewise, where the eviction action does not allege failure to pay rent, no rent deposit will be required from the tenant in order to proceed to trial.

- **Trial.** Trials generally occur shortly after (hours or days) the initial “trial” appearance through a statutory continuance. If a jury trial is requested, scheduling takes longer. By statute, continued trials must occur not later than six days after the first appearance unless all parties consent to a longer continuance. Minn. Stat. § 504B.341.
  
- **“Pay and Stay.”** In cases where failure to pay rent is the only allegation by the landlord, even if the landlord prevails at trial and obtains a writ of recovery, the tenant can “pay and stay” if the tenancy has not ended and has not been timely terminated by the landlord. To pay and stay, the tenant must pay the rent that is past due (in arrears), plus interest (if charged), plus a \$5 attorney fee if an attorney represented the landlord, and finally, any “costs of the action.” Costs of the action include the filing fee (now about \$320 - \$355) plus the process server fee, plus a witness fees if one was subpoenaed (called) for trial.
  
- **Timing.** Based on the statutory timing for filing, initial appearances and trials, the longest period of time between filing an Eviction Complaint and holding a trial on the merits should be 20 days at most, but may be as short as seven days from filing to trial. Most evictions do not involve a trial. If the landlord prevails at trial, a tenant may ask that the judge delay issuance of a writ of recovery for a reasonable period, not to exceed seven days. To obtain a stay, the tenant must show that immediate eviction would work a “substantial hardship” upon the tenant or the tenant’s family. Minn. Stat. § 504B.345. In general, an eviction from start to finish takes fewer than 30 days in Minnesota, but some cases do take longer.
  
- **Writ of Recovery.** If the landlord wins at trial, a writ of recovery is issued. To enforce the writ, the landlord delivers the writ to the local sheriff, who will enforce the writ. The deputy posts the writ at the property, which gives notice to the tenant that the tenant must be out in 24 hours. If the tenant is not gone in 24 hours, the officer may return any time after that and supervise the physical removal of the tenant from the property.

## What to do with “The Stuff”

Tenants do not always clean up after themselves when they leave the property. At times, they will vacate the property and leave behind a significant mess for the landlord to clean up. When this occurs, landlords must be careful to handle this “personal property” in accordance with Minnesota law. While the statutes ultimately govern (and should of course be deferred to instead of this article), a brief summary of the rules is discussed below.

Landlords have the right to take control of personal property in the following two circumstances: 1) when the tenant is evicted and has failed to make provisions to store the property or 2) when the tenant abandons the premises, leaving property behind. At times, there is overlap between these situations, and reference to the statutes is necessary in either case.

- **Removal and Storage of Property Upon Eviction – Minn. Stat. § 504B.365.**

Before any removal occurs, the tenant must be notified by first class mail of the date and approximate time the officer is scheduled to remove the tenant, family and personal property from the premises. It is a good idea to send this correspondence as soon as the writ is served. If the officer provides an estimated return time, that information can be included in the letter. The notice must inform the tenant that the tenant and his/her personal property will be removed from the premises if the tenant has not vacated the premises by the time specified in the notice. A landlord must also make a good faith effort to notify the tenant by telephone.

1. **Storage at different location; removal of property; costs.** If the tenant's personal property is to be stored in a place other than the premises, the officer shall remove all personal property of the defendant at the expense of the landlord. Minn. Stat. § 504B.271. The tenant must pay these costs immediately. Failure to do so results in a lien on all the personal property for the reasonable costs and expenses incurred in removing, caring for, storing, and transporting it to a suitable storage place. To enforce the lien, a landlord may keep the property until the bill is paid. If no payment is made for 60 days after execution of the writ, then the landlord is entitled to hold a public sale.
  
2. **Storage at same location; removal of property; costs.** The plaintiff must prepare an inventory and mail a copy of the inventory to the defendant's last known address or, if the defendant has provided a different address, to the address provided. The inventory must be prepared, signed, and dated in the presence of the officer and must include the following:
  - (1) a list of the items of personal property and a description of their condition;
  - (2) the date, the signature of the plaintiff or the plaintiff's agent, and the name and telephone number of a person authorized to release the personal property; and
  - (3) the name and badge number of the officer.

The officer must retain a copy of the inventory. The landlord is responsible for the proper removal, storage, and care of the tenant's personal property and is liable for damages for loss of or injury to it caused by the plaintiff's failure to exercise the same care that a reasonably careful person would exercise under similar circumstances. The officer must retain a copy of the inventory.

- **Removal and Storage of Abandoned Property – Minn. Stat. § 504B.271.** If a tenant abandons the premises, the landlord may take possession of the tenant's personal property at the premises. The landlord must store and care for the property. The landlord then has a claim against the tenant for reasonable costs and expenses incurred in removing the tenant's property and in storing and caring for the property.

28 days after the latter of 1) actual notice that the tenant has abandoned or 2) it reasonably appears the tenant has abandoned, the landlord may sell or dispose of the personal property. Proceeds from the sale may be applied to the landlord's removal, care, and storage costs. Any remaining proceeds of any sale shall be paid to the tenant upon written demand.

Before the landlord sells the property, the landlord must make reasonable efforts to notify the tenant of the sale at least 14 days before the sale, by personal service in writing or sending written notification of the sale by first class and certified mail to the tenant's last known address or usual place of abode, if known by the landlord, and by posting notice of the sale in a conspicuous place on the premises at least two weeks prior to the sale. If notification by mail is used, the 14-day period begins on the day the notices are placed in the mail.

## **Don't Mess with that Security Deposit**

At times, landlords are tempted to inflate damage estimates in order to avoid returning a security deposit to a tenant. Minnesota law discourages this practice rather strongly.

Minnesota law protects tenants from the wrongful withholding of their security deposits and imposes financial penalties on landlords who do not follow the law. Specifically, Section 504B.178 of the Minnesota Statutes provides that “within three weeks after termination of the tenancy,” a landlord “shall . . . return the deposit to the tenant, with interest . . . or furnish to the tenant a written statement showing the specific reason for the withholding of the deposit or any portion thereof.” Minn. Stat. § 504B.178, subd. 3 (2013). A penalty of \$500.00 is also imposed where any portion of a security deposit is withheld in bad faith. Bad faith is presumed if a landlord fails to return a deposit within two weeks after commencement of an action by the tenant to recover the withheld deposit.

## **Watch Out for Landlord-Favorable Fee Provisions**

More often than not, landlord-drafted leases contain provisions that allow landlords to collect attorneys’ fees if a tenant breaches a lease. These fee clauses are sometimes one-sided, favoring only the landlord. Landlords sometimes develop an artificial sense of insulation from paying a tenant’s attorneys’ fees because they rely on the contract, without considering recent changes to Minnesota law.

Recognizing that tenants usually do not have the power to negotiate these fee-shifting clauses, the Minnesota legislature decided to apply all landlord-favorable fee clauses to tenants as well. Specifically, the statute reads as follows:

If a residential lease specifies an action, circumstances, or an extent to which a landlord, directly, or through additional rent, may recover attorney fees in an action between the landlord and tenant, the tenant is entitled to attorney fees if the tenant prevails in the same type of action, under the same circumstances, and to the same extent as specified in the lease for the landlord.

Minn. Stat. § 504B.172.

The message to landlords is this: think very carefully about including a fee-shifting provision in your lease, especially if you plan to improperly withhold security deposits or allow the property to remain in a state of disrepair (which of course you should never be doing anyway).

### **About the Author**

Matthew Schaap is a business litigation attorney who lives and works in Apple Valley. He routinely litigates contract disputes on behalf of business clients. He has been named to the Minnesota Rising Stars® list for the past five consecutive years.

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